

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

LA.App..No. 399 of 2004(D)

LAR.233/2001 of PRL.S.C.,THALASSERY
.....

APPELLANT: CLAIMANT:

MATHAN RAGHAVAN, S/O.LATE C.KUNHAMAN,
MATHAN HOUSE, KIZHUTHALLI, P.O. THAZHE CHOVVA,
NEAR RAILWAY GATE, KANNUR-18.

BY ADV. SRI.K.RAKESH ROSHAN

RESPONDENTS: RESPONDENT:

THE SPECIAL TAHSILDAR (L.A), KANNUR.

BY GOVERNMENT PLEADER
SMT.THUSHARA.V

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD
ON 19/03/2007, ALONG WITH LAA NO. 458 OF 2004 THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & K.T.SANKARAN,JJ.

L.A.A.Nos.399 & 458 of 2004

Dated this the 19th day of March, 2007

JUDGMENT

Kurian Joseph,J.

These appeals are directed against the common judgment and decree in L.A.R.Nos.232 and 233 of 2001 on the file of the Sub Court, Thalassery. The acquisition is for the purpose of Chovva – Nadal Bypass. Section 4(1) notification is in the year 1998. Exts.A1 to A16 documents were marked on the side of the claimants and AWs 1 to 3 were also examined. Ext.A16 is a judgment in L.A.R.No.149/2000 which according to the appellants pertains to acquisition of an adjacent land. It is submitted that the market value is fixed at Rs.13,000 per cent. Exts.A1, A2 and A4 are documents executed prior to Section 4(1) notification. As far as Ext.A1 is concerned, the land value for 10.75 cents inclusive of a house thereon is Rs.4,50,000/-. ExtA2 is a document for assignment of 10 cents of Nanja land on the road side for

Rs.1,20,000/-. Ext.A4 is a small extent of 6.88 cents of garden land and the value is Rs.1,95,000/-. Petitioner also took out a commission. The commissioner reported the land value to be Rs.28,000/- per cent for the acquired land. The Reference Court was of the view that the commissioner has not made a comparative study of the acquired land with Exts.A1 to A4 and hence declined to place any reliance on the commission report and on that ground no reliance is placed on Exts.A1 to A4 also. Finally taking note of the enhancement given in other references pertaining to the same acquisition, the land value was fixed at Rs.7,500/- per cent in L.A.R.No.232/2001 and Rs.3,000/- in L.A.R.No.233/2001. The only discussion as far as Exts.A1 to A4 with the acquired land in the matter of comparison is that the property covered by Exts.A1 to A4 were on the road side whereas the acquired land is 100 metres away from the road. However, no reference is seen made and no discussion is also made in fixing the market value. What is the dissimilarity between L.A.R.No.232/2002 and L.A.R.No.233/2001

also is not clear. All that apart, the appellants would submit that since the centage value is more advantageous to them, they are entitled to choose the said value than the value fixed by the capitalisation method. None of these contentions is seen addressed by the reference court properly. Yet another contention is with regard to the value for the structure. According to the petitioner despite the report of the Engineer, without making any appreciation of that evidence, an arbitrary fixation has been made without any basis. In this context reference is invited to the decision of this court in State of Kerala v.Kuruvila, 2005 (3) KLT 580.

2. Having heard learned counsel for the appellants and also the learned Government Pleader who vehemently made an attempt to sustain the award, we are of the view that it is in the interests of justice that the Reference Court considers the matter afresh with reference to the evidence adduced by the claimants and passes an order properly fixing the market value. The judgment and decree

in both cases are set aside and the matter is remitted to the reference court. Since the appeals are remitted the parties will be entitled to refund of the court fee. It is also made clear that it will be open to the parties to adduce fresh evidence, if required.

(KURIAN JOSEPH, JUDGE)

(K.T.SANKARAN, JUDGE)

ahg.